

REVISED JUDICATURE ACT OF 1961 (EXCERPT)

Act 236 of 1961

CHAPTER 32

FORECLOSURE OF MORTGAGES BY ADVERTISEMENT

600.3201 Foreclosure by advertisement of mortgage containing power of sale; exception.

Sec. 3201. Every mortgage of real estate, which contains a power of sale, upon default being made in any condition of such mortgage, may be foreclosed by advertisement, in the cases and in the manner specified in this chapter. However, the procedures set forth in this chapter shall not apply to mortgages of real estate held by the Michigan state housing development authority.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1981, Act 172, Imd. Eff. Dec. 10, 1981.

Constitutionality: Plaintiff's claim of unconstitutionality for MCL 600.3201 et seq. failed for lack of the existence of state action. Cramer v Metropolitan Savings and Loan Association, 401 Mich 252; 258 NW2d 20 (1977).

600.3204 Foreclosure by advertisement; circumstances; installments as separate and independent mortgage; redemption; chain of title; commencement of proceedings prohibited; conditions; applicability of subsection (4).

Sec. 3204. (1) Subject to subsection (4), a party may foreclose a mortgage by advertisement if all of the following circumstances exist:

(a) A default in a condition of the mortgage has occurred, by which the power to sell became operative.

(b) An action or proceeding has not been instituted, at law, to recover the debt secured by the mortgage or any part of the mortgage; or, if an action or proceeding has been instituted, the action or proceeding has been discontinued; or an execution on a judgment rendered in an action or proceeding has been returned unsatisfied, in whole or in part.

(c) The mortgage containing the power of sale has been properly recorded.

(d) The party foreclosing the mortgage is either the owner of the indebtedness or of an interest in the indebtedness secured by the mortgage or the servicing agent of the mortgage.

(2) If a mortgage is given to secure the payment of money by installments, each of the installments mentioned in the mortgage after the first shall be treated as a separate and independent mortgage. The mortgage for each of the installments may be foreclosed in the same manner and with the same effect as if a separate mortgage were given for each subsequent installment. A redemption of a sale by the mortgagor has the same effect as if the sale for the installment had been made upon an independent prior mortgage.

(3) If the party foreclosing a mortgage by advertisement is not the original mortgagee, a record chain of title shall exist prior to the date of sale under section 3216 evidencing the assignment of the mortgage to the party foreclosing the mortgage.

(4) A party shall not commence proceedings under this chapter to foreclose a mortgage of property described in section 3205a(1) if 1 or more of the following apply:

(a) Notice has not been mailed to the mortgagor as required by section 3205a.

(b) After a notice is mailed to the mortgagor under section 3205a, the time for a housing counselor to notify the person designated under section 3205a(1)(c) of a request by the mortgagor under section 3205b(1) has not expired.

(c) Within 14 days after a notice is mailed to the mortgagor under section 3205a, the mortgagor has requested a meeting under section 3205b with the person designated under section 3205a(1)(c) and 90 days have not passed after the notice was mailed.

(d) The mortgagor has requested a meeting under section 3205b with the person designated under section 3205a(1)(c), the mortgagor has provided documents if requested under section 3205b(2), and the person designated under section 3205a(1)(c) has not met or negotiated with the mortgagor under this chapter.

(e) The mortgagor and mortgagee have agreed to modify the mortgage loan and the mortgagor is not in default under the modified agreement.

(f) Calculations under section 3205c(1) show that the mortgagor is eligible for a loan modification and foreclosure under this chapter is not allowed under section 3205c(7).

(5) Subsection (4) applies only to proceedings under this chapter in which the first notice under section 3208 is published after the effective date of the amendatory act that added this subsection and before 2 years after the effective date of the amendatory act that added this subsection.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1994, Act 397, Imd. Eff. Dec. 29, 1994;—Am. 2004, Act 186, Imd. Eff. July 1, 2004;—Am. 2009, Act 29, Eff. July 5, 2009.

600.3205 Definitions.

Sec. 3205. As used in this section and sections 3205a to 3205d:

- (a) "Borrower" means the mortgagor.
- (b) "Mortgage holder" means the owner of the indebtedness or of an interest in the indebtedness that is secured by the mortgage.
- (c) "Mortgage servicer" means the servicing agent of the mortgage.

History: Add. 2009, Act 29, Eff. July 5, 2009.

***** 600.3205a THIS SECTION IS REPEALED BY ACT 31 OF 2009 EFFECTIVE JULY 5, 2011 *****

600.3205a Notice from foreclosing party to borrower; contents; list of housing counselors; service; publication; failure of service; applicability of section and sections 3205b and 3205c.

Sec. 3205a. (1) Subject to subsection (6), before proceeding with a sale under this chapter of property claimed as a principal residence exempt from tax under section 7cc of the general property tax act, 1893 PA 206, MCL 211.7cc, the foreclosing party shall serve a written notice on the borrower that contains all of the following information:

(a) The reasons that the mortgage loan is in default and the amount that is due and owing under the mortgage loan.

(b) The names, addresses, and telephone numbers of the mortgage holder, the mortgage servicer, or any agent designated by the mortgage holder or mortgage servicer.

(c) A designation of 1 of the persons named in subdivision (b) as the person to contact and that has the authority to make agreements under sections 3205b and 3205c.

(d) That enclosed with the notice is a list of housing counselors prepared by the Michigan state housing development authority and that within 14 days after the notice is sent, the borrower may request a meeting with the person designated under subdivision (c) to attempt to work out a modification of the mortgage loan to avoid foreclosure and that the borrower may also request a housing counselor to attend the meeting.

(e) That if the borrower requests a meeting with the person designated under subdivision (c), foreclosure proceedings will not be commenced until 90 days after the date the notice is mailed to the borrower.

(f) That if the borrower and the person designated under subdivision (c) reach an agreement to modify the mortgage loan, the mortgage will not be foreclosed if the borrower abides by the terms of the agreement.

(g) That if the borrower and the person designated under subdivision (c) do not agree to modify the mortgage loan but it is determined that the borrower meets criteria for a modification under section 3205c(1) and foreclosure under this chapter is not allowed under section 3205c(7), the foreclosure of the mortgage will proceed before a judge instead of by advertisement.

(h) That the borrower has the right to contact an attorney, and the telephone numbers of the state bar of Michigan's lawyer referral service and of a local legal aid office serving the area in which the property is situated.

(2) A person who serves a notice under subsection (1) shall enclose with the notice a list prepared by the Michigan state housing development authority under section 3205d of the names, addresses, and telephone numbers of housing counselors approved by the United States department of housing and urban development or the Michigan state housing development authority.

(3) A person shall serve a notice under subsection (1) by mailing the notice by regular first-class mail and by certified mail, return receipt requested, with delivery restricted to the borrower, both sent to the borrower's last known address.

(4) Within 7 days after mailing a notice under subsection (3), the person who mails the notice shall publish a notice informing the borrower of the borrower's rights under this section. The person shall publish the information 1 time in the same manner as is required for publishing a notice of foreclosure sale under section 3208. The notice under this subsection shall contain all of the following information:

(a) The borrower's name and the property address.

(b) A statement that informs the borrower of all of the following:

(i) That the borrower has the right to request a meeting with the mortgage holder or mortgage servicer.

(ii) The name of the person designated under subsection (1)(c) as the person to contact and that has the authority to make agreements under sections 3205b and 3205c.

(iii) That the borrower may contact a housing counselor by visiting the Michigan state housing development authority's website or by calling the Michigan state housing development authority.

(iv) The website address and telephone number of the Michigan state housing development authority.

(v) That if the borrower requests a meeting with the person designated under subsection (1)(c), foreclosure

proceedings will not be commenced until 90 days after the date notice is mailed to the borrower.

(vi) That if the borrower and the person designated under subsection (1)(c) reach an agreement to modify the mortgage loan, the mortgage will not be foreclosed if the borrower abides by the terms of the agreement.

(vii) That the borrower has the right to contact an attorney, and the telephone number of the state bar of Michigan's lawyer referral service.

(5) A borrower on whom notice is required to be served under this section who is not served and against whom foreclosure proceedings are commenced under this chapter may bring an action in the circuit court for the county in which the mortgaged property is situated to enjoin the foreclosure.

(6) If the borrower and the person designated under subsection (1)(c) have previously agreed to modify the mortgage loan under section 3205b, this section and sections 3205b and 3205c do not apply unless the borrower has complied with the terms of the mortgage loan, as modified, for 1 year after the date of the modification.

History: Add. 2009, Act 30, Eff. July 5, 2009.

***** 600.3205b THIS SECTION IS REPEALED BY ACT 31 OF 2009 EFFECTIVE JULY 5, 2011 *****

600.3205b Modification of mortgage loan; negotiations; contacting housing counselor; providing documents; scheduling meeting.

Sec. 3205b. (1) A borrower who wishes to participate in negotiations to attempt to work out a modification of a mortgage loan shall contact a housing counselor from the list provided under section 3205a within 14 days after the list is mailed to the borrower. Within 10 days after being contacted by a borrower, a housing counselor shall inform the person designated under section 3205a(1)(c) in writing of the borrower's request.

(2) After being informed of a borrower's request to meet under this section, the person designated under section 3205a(1)(c) may request the borrower to provide any documents that are necessary to determine whether the borrower is eligible for a modification under section 3205c. The borrower shall give the person designated under section 3205a(1)(c) copies of any documents requested under this section.

(3) A housing counselor contacted by a borrower under this section shall schedule a meeting between the borrower and the person designated under section 3205a(1)(c) to attempt to work out a modification of the mortgage loan. At the request of the borrower, the housing counselor will attend the meeting. The meeting and any later meetings shall be held at a time and place that is convenient to all parties, or in the county where the property is situated.

History: Add. 2009, Act 30, Eff. July 5, 2009.

***** 600.3205c THIS SECTION IS REPEALED BY ACT 31 OF 2009 EFFECTIVE JULY 5, 2011 *****

600.3205c Loan modification.

Sec. 3205c. (1) If a borrower has contacted a housing counselor under section 3205b but the process has not resulted in an agreement to modify the mortgage loan, the person designated under section 3205a(1)(c) shall work with the borrower to determine whether the borrower qualifies for a loan modification. Unless the loan is described in subsection (2) or (3), in making the determination under this subsection, the person designated under section 3205a(1)(c) shall use a loan modification program or process that includes all of the following features:

(a) The loan modification program or process targets a ratio of the borrower's housing-related debt to the borrower's gross income of 38% or less, on an aggregate basis. Housing-related debt under this subdivision includes mortgage principal and interest, property taxes, insurance, and homeowner's fees.

(b) To reach the 38% target specified in subdivision (a), 1 or more of the following features:

(i) An interest rate reduction, as needed, subject to a floor of 3%, for a fixed term of at least 5 years.

(ii) An extension of the amortization period for the loan term, to 40 years or less from the date of the loan modification.

(iii) Deferral of some portion of the amount of the unpaid principal balance of 20% or less, until maturity, refinancing of the loan, or sale of the property.

(iv) Reduction or elimination of late fees.

(2) In making the determination under subsection (1), if the mortgage loan is pooled for sale to an investor that is a governmental entity, the person designated under section 3205a(1)(c) shall follow the modification guidelines dictated by the governmental entity.

(3) In making the determination under subsection (1), if the mortgage loan has been sold to a government-sponsored enterprise, the person designated under section 3205a(1)(c) shall follow the modification guidelines dictated by the government-sponsored enterprise.

(4) This section does not prohibit a loan modification on other terms or another loss mitigation strategy instead of modification if the other modification or strategy is agreed to by the borrower and the person designated under section 3205a(1)(c).

(5) The person designated under section 3205a(1)(c) shall provide the borrower with both of the following:

(a) A copy of any calculations made by the person under this section.

(b) If requested by the borrower, a copy of the program, process, or guidelines under which the determination under subsection (1) was made.

(6) Subject to subsection (7), if the results of the calculation under subsection (1) are that the borrower is eligible for a modification, the mortgage holder or mortgage servicer shall not foreclose the mortgage under this chapter but may proceed under chapter 31. If the results of the calculation under subsection (1) are that the borrower is not eligible for a modification or if subsection (7) applies, the mortgage holder or mortgage lender may foreclose the mortgage under this chapter.

(7) If the determination under subsection (1) is that the borrower is eligible for a modification, the mortgage holder or mortgage servicer may proceed to foreclose the mortgage under this chapter if both of the following apply:

(a) The person designated under section 3205a(1)(c) has in good faith offered the borrower a modification agreement prepared in accordance with the modification determination.

(b) For reasons not related to any action or inaction of the mortgage holder or mortgage servicer, the borrower has not executed and returned the modification agreement within 14 days after the borrower received the agreement.

(8) If a mortgage holder or mortgage servicer begins foreclosure proceedings under this chapter in violation of this section, the borrower may file an action in the circuit court for the county where the mortgaged property is situated to convert the foreclosure proceeding to a judicial foreclosure. If a borrower files an action under this section and the court determines that the borrower participated in the process under section 3205b, a modification agreement was not reached, and the borrower is eligible for modification under subsection (1), and subsection (7) does not apply, the court shall enjoin foreclosure of the mortgage by advertisement and order that the foreclosure proceed under chapter 31.

History: Add. 2009, Act 31, Eff. July 5, 2009.

***** 600.3205d THIS SECTION IS REPEALED BY ACT 31 OF 2009 EFFECTIVE JULY 5, 2011 *****

600.3205d Housing counselors; list.

Sec. 3205d. The Michigan state housing development authority shall develop the list of housing counselors approved by the United States department of housing and urban development or by the Michigan state housing development authority who may perform the duties of housing counselor under sections 3205a to 3205c.

History: Add. 2009, Act 31, Eff. July 5, 2009.

600.3205e Repeal of MCL 600.3205a to 600.3205d.

Sec. 3205e. Sections 3205a to 3205d are repealed effective 2 years after the effective date of the amendatory act that added this section.

History: Add. 2009, Act 31, Eff. July 5, 2009.

600.3208 Notice of foreclosure; publication; posting.

Sec. 3208. Notice that the mortgage will be foreclosed by a sale of the mortgaged premises, or some part of them, shall be given by publishing the same for 4 successive weeks at least once in each week, in a newspaper published in the county where the premises included in the mortgage and intended to be sold, or some part of them, are situated. If no newspaper is published in the county, the notice shall be published in a newspaper published in an adjacent county. In every case within 15 days after the first publication of the notice, a true copy shall be posted in a conspicuous place upon any part of the premises described in the notice.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1971, Act 104, Eff. Mar. 30, 1972.

600.3212 Notice of foreclosure by advertisement; contents.

Sec. 3212. Every notice of foreclosure by advertisement shall include all of the following:

(a) The names of the mortgagor, the original mortgagee, and the foreclosing assignee, if any.

(b) The date of the mortgage and the date the mortgage was recorded.

(c) The amount claimed to be due on the mortgage on the date of the notice.

(d) A description of the mortgaged premises that substantially conforms with the description contained in the mortgage.

(e) For a mortgage executed on or after January 1, 1965, the length of the redemption period as determined under section 3240.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1964, Act 102, Eff. Aug. 28, 1964;—Am. 1994, Act 397, Imd. Eff. Dec. 29, 1994;—Am. 2004, Act 186, Imd. Eff. July 1, 2004.

600.3216 Sale; time and place.

Sec. 3216. The sale shall be at public sale, between the hour of 9 o'clock in the forenoon and 4 o'clock in the afternoon, at the place of holding the circuit court within the county in which the premises to be sold, or some part of them, are situated, and shall be made by the person appointed for that purpose in the mortgage, or by the sheriff, undersheriff, or a deputy sheriff of the county, to the highest bidder.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.3220 Sale; adjournment; notice; posting; publication.

Sec. 3220. Such sale may be adjourned from time to time, by the sheriff or other officer or person appointed to make such sale at the request of the party in whose name the notice of sale is published by posting a notice of such adjournment before or at the time of and at the place where said sale is to be made, and if any adjournment be for more than 1 week at one time, the notice thereof, appended to the original notice of sale, shall also be published in the newspaper in which the original notice was published, the first publication to be within 10 days of the date from which the sale was adjourned and thereafter once in each full secular week during the time for which such sale shall be adjourned. No oral announcement of any adjournment shall be necessary.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.3224 Sale of distinct parcels.

Sec. 3224. If the mortgaged premises consist of distinct farms, tracts, or lots not occupied as 1 parcel, they shall be sold separately, and no more farms, tracts, or lots shall be sold than shall be necessary to satisfy the amount due on such mortgage at the date of the notice of sale, with interest and the cost and expenses allowed by law but if distinct lots be occupied as 1 parcel, they may in such case be sold together.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.3228 Sale; purchase by mortgagee or assigns.

Sec. 3228. The mortgagee, his assigns, or his or their legal representatives, may, fairly and in good faith, purchase the premises so advertised, or any part thereof, at such sale.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.3232 Deed of sale; endorsement; deposit with register; recording; entry upon redemption.

Sec. 3232. The officer or person making the sale shall forthwith execute, acknowledge, and deliver, to each purchaser a deed of the premises bid off by him; and if the lands are situated in several counties he shall make separate deeds of the lands in each county, and specify therein the precise amounts for which each parcel of land therein described was sold. And he shall endorse upon each deed the time when the same will become operative in case the premises are not redeemed according to law. Such deed or deeds shall, as soon as practicable, and within 20 days after such sale, be deposited with the register of deeds of the county in which the land therein described is situated, and the register shall endorse thereon the time the same was received, and for the better preservation thereof, shall record the same at length in a book to be provided in his office for that purpose; and shall index the same in the regular index of deeds, and the fee for recording the same shall be included among the other costs and expenses allowed by law. In case such premises shall be redeemed, the register of deeds shall, at the time of destroying such deed, as provided in section 3244 of this chapter, write on the face of such record the word "Redeemed", stating at what date such entry is made, and signing such entry with his official signature.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.3236 Deed of sale; effect upon failure to redeem; prior liens.

Sec. 3236. Unless the premises described in such deed shall be redeemed within the time limited for such redemption as hereinafter provided, such deed shall thereupon become operative, and shall vest in the grantee therein named, his heirs or assigns, all the right, title, and interest which the mortgagor had at the time of the execution of the mortgage, or at any time thereafter, except as to any parcel or parcels which may have been redeemed and canceled, as hereinafter provided; and the record thereof shall thereafter, for all purposes be deemed a valid record of said deed without being re-recorded, but no person having any valid subsisting lien

upon the mortgaged premises, or any part thereof, created before the lien of such mortgage took effect, shall be prejudiced by any such sale, nor shall his rights or interests be in any way affected thereby.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.3240 Redemption of premises; payment; redemption of senior lien; defenses; recordation; redemption periods; amount stated in recorded affidavit.

Sec. 3240. (1) A purchaser's deed is void if the mortgagor, the mortgagor's heirs, executors, or administrators, or any person lawfully claiming under the mortgagor or the mortgagor's heirs, executors, or administrators redeems the entire premises sold by paying the amount required under subsection (2), within the applicable time limit prescribed in subsections (7) to (12), to the purchaser or the purchaser's executors, administrators, or assigns, or to the register of deeds in whose office the deed is deposited for the benefit of the purchaser.

(2) The amount required to be paid under subsection (1) is the sum that was bid for the entire premises sold, with interest from the date of the sale at the interest rate provided for by the mortgage, together with the amount of the sheriff's fee paid by the purchaser under section 2558(2)(q), and an additional \$5.00 as a fee for the care and custody of the redemption money if the payment is made to the register of deeds. The register of deeds shall not determine the amount necessary for redemption. The purchaser shall attach an affidavit with the deed to be recorded under this section that states the exact amount required to redeem the property under this subsection, including any daily per diem amounts, and the date by which the property must be redeemed shall be stated on the certificate of sale. The purchaser may include in the affidavit the name of a designee responsible on behalf of the purchaser to assist the person redeeming the property in computing the exact amount required to redeem the property. The designee may charge a fee as stated in the affidavit and may be authorized by the purchaser to receive redemption funds. The purchaser shall accept the amount computed by the designee.

(3) If a distinct lot or parcel separately sold is redeemed, leaving a portion of the premises unredeemed, the deed shall be void only to the redeemed parcel or parcels.

(4) If after the sale the purchaser, the purchaser's heirs, executors, or administrators, or any person lawfully claiming under the purchaser or the purchaser's heirs, executors, or administrators pays taxes assessed against the property, amounts necessary to redeem senior liens from foreclosure, condominium assessments, homeowner association assessments, community association assessments, or premiums on an insurance policy covering any buildings located on the property that under the terms of the mortgage it would have been the duty of the mortgagor to pay if the mortgage had not been foreclosed and that are necessary to keep the policy in force until the expiration of the period of redemption, redemption shall be made only upon payment of the sum specified in subsection (2) plus the amounts specified in this subsection with interest on the amounts specified in this subsection from the date of the payment to the date of redemption at the interest rate specified in the mortgage, if all of the following are filed with the register of deeds with whom the deed is deposited:

(a) An affidavit by the purchaser or someone in his or her behalf who has knowledge of the facts of the payment showing the amount and items paid.

(b) The receipt or copy of the canceled check evidencing the payment of the taxes, amounts necessary to redeem senior liens from foreclosure, condominium assessments, homeowner association assessments, community association assessments, or insurance premiums.

(c) An affidavit of an insurance agent of the insurance company stating that the payment was made and what portion of the payment covers the premium for the period before the expiration of the period of redemption.

(5) If the redemption payment in subsection (4) includes an amount used to redeem a senior lien from a nonjudicial foreclosure, the mortgagor shall have the same defenses against the purchaser with respect to the amount used to redeem the senior lien as the mortgagor would have had against the senior lien.

(6) The register of deeds shall indorse on the documents filed under subsection (4) the time they are received. The register of deeds shall record the affidavit of the purchaser only and shall preserve in his or her files the recorded affidavit, receipts, insurance receipts, and insurance agent's affidavit until expiration of the period of redemption.

(7) Subject to subsections (9) to (11), for a mortgage executed on or after January 1, 1965, on commercial or industrial property, or multifamily residential property in excess of 4 units, the redemption period is 6 months from the date of the sale.

(8) Subject to subsections (9) to (11), for a mortgage executed on or after January 1, 1965, on residential property not exceeding 4 units and not more than 3 acres in size, if the amount claimed to be due on the mortgage at the date of the notice of foreclosure is more than 66-2/3% of the original indebtedness secured by the mortgage, the redemption period is 6 months.

(9) Subject to subsection (10), for a mortgage on residential property not exceeding 4 units, if the property is abandoned as determined under section 3241, the redemption period is 3 months.

(10) For a mortgage on residential property not exceeding 4 units, if the amount claimed to be due on the mortgage at the date of the notice of foreclosure is more than 66-2/3% of the original indebtedness secured by the mortgage and the property is abandoned as determined under section 3241, the redemption period is 1 month.

(11) If the property is abandoned as determined under section 3241a, the redemption period is 30 days or until the time to provide the notice required by section 3241a(c) expires, whichever is later.

(12) If subsections (7) to (11) do not apply, the redemption period is 1 year from the date of the sale.

(13) The amount stated in any affidavits recorded under this section shall be the amount necessary to satisfy the requirements for redemption under this section.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1964, Act 15, Eff. Aug. 28, 1964;—Am. 1964, Act 102, Eff. Aug. 28, 1964;—Am. 1971, Act 104, Eff. Mar. 30, 1972;—Am. 1972, Act 377, Eff. Mar. 30, 1973;—Am. 1986, Act 94, Imd. Eff. May 7, 1986;—Am. 1994, Act 397, Imd. Eff. Dec. 29, 1994;—Am. 1996, Act 214, Imd. Eff. May 28, 1996;—Am. 2000, Act 380, Imd. Eff. Jan. 2, 2001;—Am. 2004, Act 538, Eff. Mar. 30, 2005;—Am. 2006, Act 579, Imd. Eff. Jan. 3, 2007.

600.3241 Abandonment of premises; presumption.

Sec. 3241. For purposes of this chapter, abandonment of premises shall be conclusively presumed upon satisfaction of the following requirements:

(a) Within 30 days before the commencement of foreclosure proceedings hereunder, the mortgagee mails by certified mail, return receipt requested, to the mortgagor's last known address a notice that the subject mortgage is in default and that the mortgagee intends to foreclose it.

(b) Before commencement of foreclosure proceedings hereunder, the mortgagee executes and causes to be duly recorded in the county where the premises are located an affidavit which states:

(i) That the mortgagee has mailed to the last known address of the mortgagor a notice of default and intention to foreclose pursuant to subdivision (a) and that the mortgagor has not responded to the notice.

(ii) That the mortgagee has made a personal inspection of the mortgaged premises and that the inspection does not reveal that the mortgagor or persons claiming under him are presently occupying or intend to occupy the premises.

(c) The mortgagee mails by certified mail, return receipt requested, a copy of the affidavit recorded pursuant to subdivision (b) to the mortgagor at his last known address before commencement of foreclosure proceedings.

(d) The mortgagor, his heirs, executor, administrator, or any person lawfully claiming from, or under 1 of them, before expiration of the period of redemption, does not give a written affidavit to the mortgagee and record a duplicate original in the county where the premises are located stating that the mortgagor or person claiming under him is occupying or intends to occupy the premises.

History: Add. 1971, Act 104, Eff. Mar. 30, 1972.

600.3241a Abandonment of premises; residential property not exceeding 4 units; presumption.

Sec. 3241a. For purposes of this chapter, if foreclosure proceedings have been commenced under this chapter against residential property not exceeding 4 units, abandonment of premises shall be conclusively presumed upon satisfaction of all of the following requirements before the end of the redemption period:

(a) The mortgagee has made a personal inspection of the mortgaged premises and the inspection does not reveal that the mortgagor or persons claiming under the mortgagor are presently occupying or will occupy the premises.

(b) The mortgagee has posted a notice at the time of making the personal inspection and has mailed by certified mail, return receipt requested, a notice to the mortgagor at the mortgagor's last known address, which notices state that the mortgagee considers the premises abandoned and that the mortgagor will lose all rights of ownership 30 days after the foreclosure sale or when the time to provide the notice required by subdivision (c) expires, whichever is later, unless the mortgagor; the mortgagor's heirs, executor, or administrator; or a person lawfully claiming from or under 1 of them provides the notice required by subdivision (c).

(c) Within 15 days after the notice required by subdivision (b) was posted and mailed, the mortgagor; the mortgagor's heirs, executor, or administrator; or a person lawfully claiming from or under 1 of them has not given written notice by first-class mail to the mortgagee at an address provided by the mortgagee in the notices required by subdivision (b) stating that the premises are not abandoned.

History: Add. 1986, Act 94, Imd. Eff. May 7, 1986;—Am. 2006, Act 579, Imd. Eff. Jan. 3, 2007.

600.3244 Redemption; destruction of deed; record.

Sec. 3244. Upon the payment of the entire sum bid at such sale, and interest thereon, and the fee of \$5.00 mentioned in section 3240 to the register in whose office the deed therefor shall have been deposited, or upon delivering to such register a certificate, signed and acknowledged by the person entitled to receive the same, and certified by some officer authorized to take the acknowledgment of deeds, setting forth that such sum, with interest, has been paid to such person, and upon paying to such register a fee of 25 cents, such register shall thereupon destroy such deed, and shall enter in the margin of the record of such mortgage, a memorandum that such mortgage is satisfied; or in case the premises shall have been sold in parcels, and 1 or more of said parcels shall have been redeemed, as hereinbefore provided, it shall then be the duty of the register to enter upon the face of said sheriff's deed, and the record thereof, a memorandum that the same is inoperative as to the parcel or parcels so redeemed, and to enter in the margin of the record of such mortgage a memorandum that the same is satisfied as to the parcel or parcels so redeemed.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1963, Act 240, Eff. Sept. 6, 1963.

600.3248 Redemption; refusal to certify payment; civil liability.

Sec. 3248. If any person entitled to receive such redemption moneys, shall, upon payment or tender thereof to him, refuse to make and acknowledge such certificate of payment, he shall be liable to the person aggrieved thereby, in the sum of \$100.00 damages, over and above all the actual damages sustained, to be recovered in a civil action, except that no damages of any kind may be recovered from any register of deeds who shall refuse to accept tender of payment after the time indorsed upon the deed when the same shall become operative in case the premises are not redeemed, and the officer or person making the sale shall be entitled to rely conclusively upon the recital of the length of the redemption period contained in the notice of foreclosure in making such indorsement upon the deed.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1964, Act 102, Eff. Aug. 28, 1964.

600.3252 Disposition of surplus money.

Sec. 3252. If after any sale of real estate, made as herein prescribed, there shall remain in the hands of the officer or other person making the sale, any surplus money after satisfying the mortgage on which the real estate was sold, and payment of the costs and expenses of the foreclosure and sale, the surplus shall be paid over by the officer or other person on demand, to the mortgagor, his legal representatives or assigns, unless at the time of the sale, or before the surplus shall be so paid over, some claimant or claimants, shall file with the person so making the sale, a claim or claims, in writing, duly verified by the oath of the claimant, his agent, or attorney, that the claimant has a subsequent mortgage or lien encumbering the real estate, or some part thereof, and stating the amount thereof unpaid, setting forth the facts and nature of the same, in which case the person so making the sale, shall forthwith upon receiving the claim, pay the surplus to, and file the written claim with the clerk of the circuit court of the county in which the sale is so made; and thereupon any person or persons interested in the surplus, may apply to the court for an order to take proofs of the facts and circumstances contained in the claim or claims so filed. Thereafter, the court shall summon the claimant or claimants, party, or parties interested in the surplus, to appear before him at a time and place to be by him named, and attend the taking of the proof, and the claimant or claimants or party interested who shall appear may examine witnesses and produce such proof as they or either of them may see fit, and the court shall thereupon make an order in the premises directing the disposition of the surplus moneys or payment thereof in accordance with the rights of the claimant or claimants or persons interested.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1974, Act 297, Eff. Apr. 1, 1975.

600.3256 Affidavits to perpetuate evidence of sale; endorsement or annexation to one instrument.

Sec. 3256. (1) Any party desiring to perpetuate the evidence of any sale made in pursuance of the provisions of this chapter, may procure:

(a) An affidavit of the publication of the notice of sale, and of any notice of postponement, to be made by the publisher of the newspaper in which the same was inserted, or by some person in his employ knowing the facts; and

(b) An affidavit of the fact of any sale pursuant to such notice, to be made by the person who acted as auctioneer at the sale, stating the time and place at which the same took place, the sum bid, and the name of the purchaser; and

(c) An affidavit setting forth the time, manner and place of posting a copy of such notice of sale to be made by the person posting the same.

(2) Where any or all of such affidavits are endorsed upon or annexed to 1 instrument, a single copy of the

notice of sale, and a single copy of any notice of postponement, shall be sufficient to annex to such instrument, and reference made in any of such affidavits to copy of notice of sale and to copy of any notice of postponement of sale as annexed or attached shall be deemed to refer to such single copy of notice of sale and to such single copy of any notice of postponement.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.3260 Affidavits to perpetuate evidence of sale; persons to take.

Sec. 3260. The affidavits specified in section 3256 may be taken and certified by any officer authorized by law to administer oaths.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.3264 Affidavits to perpetuate evidence of sale; record; evidence.

Sec. 3264. Such affidavits shall be recorded at length by the register of deeds of the county in which the premises are situated, in a book kept for the record of deeds; and such original affidavits, the record thereof, and certified copies of such record, shall be presumptive evidence of the facts therein contained.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.3268 Marginal notes to record of mortgages.

Sec. 3268. A note referring to the page and book where the evidence of any sale having been made under a mortgage, is recorded, shall be made by the register recording such evidence, in the margin of the record of such mortgage, if such record be in his office.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.3272 Repealed. 2004, Act 538, Eff. Mar. 30, 2005.

Compiler's note: The repealed section pertained to notice to purchase of entire bid payment.

600.3276 Posting of notices; mortgagee's right of entry.

Sec. 3276. Incident to the foreclosure of a mortgage pursuant to the provisions of this chapter, the mortgagee, his agents and assigns shall have a right to enter upon the mortgaged premises for the purpose of posting or serving the notices required by this chapter.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.3280 Foreclosure by advertisement; deficiency; defenses.

Sec. 3280. When, in the foreclosure of a mortgage by advertisement, any sale of real property has been made after February 11, 1933, or shall be hereafter made by a mortgagee, trustee, or other person authorized to make the same pursuant to the power of sale contained therein, at which the mortgagee, payee or other holder of the obligation thereby secured has become or becomes the purchaser, or takes or has taken title thereto at such sale either directly or indirectly, and thereafter such mortgagee, payee or other holder of the secured obligation, as aforesaid, shall sue for and undertake to recover a deficiency judgment against the mortgagor, trustor or other maker of any such obligation, or any other person liable thereon, it shall be competent and lawful for the defendant against whom such deficiency judgment is sought to allege and show as matter of defense and set-off to the extent only of the amount of the plaintiff's claim, that the property sold was fairly worth the amount of the debt secured by it at the time and place of sale or that the amount bid was substantially less than its true value, and such showing shall constitute a defense to such action and shall defeat the deficiency judgment against him, either in whole or in part to such extent. This section shall not affect nor apply to the rights of other purchasers or of innocent third parties, nor shall it be held to affect or defeat the negotiability of any note, bond or other obligation secured by such mortgage, deed of trust or other instrument. Such proceedings, as aforesaid, shall in no way affect the title of the purchaser to the lands acquired by such purchase. This section shall not apply to foreclosure sales made pursuant to an order or decree of court nor to any judgment sought or rendered in any foreclosure suit nor to any chancery sale heretofore or hereafter made and confirmed.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.3285 Validity of foreclosure; violation of subsection (2); penalty; filing of action by attorney general; applicability of section to mortgage entered into before effective date of act; definitions.

Sec. 3285. (1) If a mortgagor is a service member, either the mortgagor entered into the mortgage before becoming a service member or the mortgagor is deployed in overseas service, and, during the service member's period of military service or within 6 months after the end of the period of military service, the

mortgage given by the service member is foreclosed by advertisement or the mortgaged real estate sold under a power of sale, the foreclosure or sale is invalid unless the foreclosure or sale was ordered by a court.

(2) A person shall not, individually or acting through another person, foreclose, sell, or attempt to foreclose or sell real estate with the knowledge that the foreclosure or sale is invalid under this section. A person who violates this subsection is subject to a civil fine of \$2,000.00.

(3) The attorney general may file an action in the circuit court to collect a civil fine under this section. A civil fine collected under this section shall be deposited in the military family relief fund created in section 3 of the military family relief fund act, 2004 PA 363, MCL 35.1213.

(4) This section does not apply to a mortgage entered into before the effective date of the amendatory act that added this section.

(5) As used in this section:

(a) "Active duty" means full-time duty in the active military service of the United States. Active duty includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the secretary of the military department concerned. Active duty does not include full-time national guard duty.

(b) "Military service" means any of the following:

(i) Active duty.

(ii) If the service member is a member of the national guard, service under a call to active service authorized by the president or secretary of defense of the United States for a period of more than 30 consecutive days under 32 USC 502(f) to respond to a national emergency declared by the president and supported by federal money.

(iii) A period during which the service member is absent from active duty because of sickness, wounds, leave, or other lawful cause.

(c) "Period of military service" means the period beginning on the date on which the service member enters military service and ending on the date on which the service member is released from military service or dies while in military service.

(d) "Service member" means an individual who is in military service and is a member of the armed services or reserve forces of the United States or a member of the Michigan national guard.

History: Add. 2008, Act 138, Imd. Eff. May 21, 2008.